

means claimed. Additional drawings showing both the vibrating and heating means have been added to the application papers thus overcoming this objection. These added drawings do not introduce any new matter into that originally filed in this application and both their acceptance and the withdrawal of this objection are respectfully requested.

### **In the Brief Description of the Drawings**

Add the following description of new FIGS. 5 and 6 where appropriate on Specification page 6:

--FIG. 5 is an idealized side cross-sectional view of a device embodying the present invention showing a vibrating means; and,

FIG. 6 is an idealized side cross-sectional view of a device embodying the present invention showing a heating means.--

### **In the Specification**

On page 9 of the specification, after the paragraph ending on line 19, insert the following paragraph:

--One preferred embodiment of such a self-contained vibrating unit is illustrated in FIG. 5 and designated generally by reference numeral 500. Such a self-contained vibrating unit 500 utilizes a clip-in mechanism 520 to mount it to cup 522. Unit 500 contains an offset motor 502 that is sealed inside a container 504 with a battery 506 for its power source. A release connector 524 may be interposed in wiring 516 to facilitate changing of battery 506. Offset motor 502 is mechanically connected to diaphragm 512 by tie wraps and electrically to battery 506 by wiring 516. Diaphragm 512 may be

elastically attached to the cup by an adhesive, such as Bostic 2402 glue or any other similar elastic adhesive around the periphery 518 of diaphragm 512.--

On page 9 of the specification, after the paragraph ending on line 23, insert the following paragraph:

-- One preferred embodiment of such a heating unit is illustrated in FIG. 6 and designated generally by reference numeral 600. Such a heating unit 600 utilizes a clip-in mechanism 620 to mount it to cup 622. Unit 600 contains a heating element 602 that is sealed inside a container 604 with a battery 606 for its power source. A release connector 624 may be interposed in wiring 616 to facilitate changing of battery 606. Heating element 602 is embedded in wall portion 612. Wall portion 612 may be elastically attached to cup 622 by an adhesive, such as Bostic 2402 glue or any other similar elastic adhesive around the periphery 618 of wall portion 612.--

#### *Claim Rejections – 35 USC 102(b)*

Claims 1-2, 15, and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by publication 2002/0077621 to Prince ("Prince").

Prince discloses a method and device for filing the nasal cavities of a person through the nostril openings with a liquid while the head of the person is at a safe forward angle of tilt. To insure that any liquid exiting the rear of the nasal cavities drain into the back of the oral cavity of the mouth, Prince's device requires the head of the user be at a prescribed or greater angle of tilt during use for safety reasons. Means for assuring the user's head is at least at a prescribed forward angle of tilt during use is disclosed.

Applicant's inventive structure in claims 1 and 26 is a nasal-nasopharyngeal irrigating and cleansing system that includes a method and a cup having, among other structure, a sealing rim on its front wall for maintaining a watertight seal with a user's face when the cup is rotated from a generally upright position to a generally horizontal position to allow pouring of a liquid held in the cup into the user's nasal and sinus cavities. Applicant's invention requires that the user's head be generally upright or even tilted slightly rearward during use of the cup and that the cup be held against the user's generally upright or rearward head and rotated from a generally upright position to a generally horizontal position to allow pouring or inhalation of the contained liquid into the user's nasal and sinus cavities. Applicant has amended his claims to emphasize the upright position of the user's head during use of Applicant's device, taught in Applicant's specification, to distinguish it plainly from Prince.

Specifically, Applicant, in amended claims 1 and 26 from which the other cited claims depend, claims a cup having a sealing rim that is placed against the user's face while the user's head is held in a generally upright or even backward position while the cup is rotated from a generally vertical position to a generally horizontal position to allow the pouring of liquid contained in the cup into the user's nasal and sinus cavities.

Applicant's claimed positioning of the user's head directly contradicts the essential teaching of Prince requiring its user's head be held in a safe forward angle of tilt when liquid is inhaled to allow any seepage from the nasal cavities to exit the mouth instead of following the palate straight down the pharynx by force of gravity to enter the trachea, bronchia or the lungs. Prince states that "if the head is held upright while the container is at the acute angle allowing the cheek seals to contact the face and the nose to

dip into the liquid, subsequently preventing the liquid from submerging the nostrils by allowing substantially all of liquid in the reservoir to spill out the opening above the pool over the rim and the cheek seals.” Column 3, lines 50-56.

Likewise, Prince’s cup is not capable of rotation against its user’s face while maintaining a seal against its user’s face. In fact, Prince does not permit a rotation of its cup member with regard to its user’s face and in fact teaches away from this by providing its cup member with a lack of sealing capability that is highlighted by Prince as a safety feature. Specifically, at Column 3, lines 39 et seq., Prince states that when its cup is held at greater angles, such as perpendicular to the face, the liquid is prevented from flowing to the nasal cavities by the contact region failing to contact the face along the sides of the nose allowing the liquid to spill out the open regions of the contact region of the cup that would form the cheek seals.

Applicant’s claim language, in direct contradiction to Prince’s forward tilt of its user’s head, requires not only that the user’s head be held generally upright or even rearward, but that his cup maintain a watertight seal between the sealing rim of the cup and the user’s face when the cup is rotated from a generally vertical to a generally horizontal position to allow liquid to be poured into the user’s nasal cavities.

These claimed structural distinctions are due to a fundamental difference in operation of Applicant’s claimed invention over that of Prince. Prince requires that its user hold his head tilted forward and inhale the cup’s liquid. If the nasal passages or cavities are blocked with mucous then inhalation becomes difficult if not impossible. If Prince’s user strongly inhales to overcome the blockage, once freed, the liquid, as well as the now loose mucous is capable of bypassing the palate to enter directly the trachea,

bronchia or the lungs bypassing an exit through the mouth area. Applicant overcomes this situation by having the user hold his head generally upright or even slightly rearward and rotating the cup to pour the liquid into the nasal cavities of the user. Thus, the user's inability to inhale if his nasal cavities are blocked, does not prevent the poured liquid solution from dissolving mucous blockage or seeking its own path through the blockage using the force of gravity.

Additionally, Prince avoids having its liquid enter the user's throat area arguing that it is unsafe. Applicant's device as claimed allows the user to have the cup's liquid enter into his throat area. By permitting coating of the throat area, Applicant's device allows placement of antibacterial and antiviral solutions where germs are likely to adhere to the throat lining.

Applicant's claims are distinct over the Prince reference by requiring that the user's head position be generally upright or rearwards and that the seal be maintained during rotation of the cup from a generally vertical to a generally horizontal position to allow contained liquid to pour by force of gravity into the user's nasal cavities.

Claims 2, 15 and 27-29 are dependent upon claims 1 and 26 and further delineate the inventive structure by adding additional structural limitations. As such, applicant further believes that they also are patentable over the Prince reference. Applicant therefore respectfully requests the withdrawal of the rejection of claims 1-2, 15, and 26-29 and their passage to allowance.

#### ***Claim Rejections – 35 USC 103(a)***

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

Prince reference discussed above in view of U.S. Patent No. 6,412,488 B1 to Barnett et al. ("Barnett").

U.S. Patent No. 6,412,488 B1 to Barnett et al. teaches a low contact nasal mask assembly having a sealing member defined from a unitary piece of elastomeric material that defines a nose receiving cavity for communicating a pressurized gas to a user's nose. There is no teaching that the seal is watertight, only pressurized gas is described in the reference.

As analyzed above, Applicant claims structure directly contradictory to Prince and the addition of a watertight seal to Prince would not correct Prince's fundamental shortcomings of requiring a forward tilt to its user's head and inhalation of its liquid.

Additionally, assuming that Barnett does teach a watertight seal, Barnett still fails to provide sufficient basis for rejection of Applicant's claims as amended even were it able to be combined with the Prince reference, as a watertight seal cannot be added to Prince without contradicting one of Prince's stated essential safety features.

Specifically, adding a watertight seal to Prince would negate its stated safety feature of a lack of sealing capability use of Prince's cup to prevent inadvertent gravity flow of liquid from Prince's cup down a user's throat. As noted above, at Column 3, lines 39 et seq., Prince states that when its cup is held at greater angles, such as perpendicular to the face, the liquid is prevented from flowing to the nasal cavities by the contact region failing to contact the face along the sides of the nose allowing the liquid to spill out the open regions of the contact region of the cup that would form the cheek seals. Adding a watertight seal to Prince therefore contradicts this requirement that the liquid spill out from the open regions of the cheek seals and does not supply any of

Applicant's claimed structure missing from the Prince reference noted above.

As noted above in analyzing the Prince reference, Applicant's claim language, in direct contradiction to Prince, requires not only that the user's head be held generally upright or even slightly rearward, but that Applicant's cup maintain a watertight seal between the cup's sealing rim and the user's face when the cup is rotated from a generally vertical to a generally horizontal position to allow liquid to be poured into the user's nasal cavities. Even the addition of a watertight seal fails to provide these claimed and missing elements from Prince, or any reasonable combination of Prince and Barnett. Accordingly, Applicant respectfully requests that the rejection of claims 3-7 be withdrawn and that the claims passed to allowance.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Prince reference discussed above in view of U.S. Patent No. 5,911,504 A to Schindlegger ("Schindlegger").

U.S. Patent No. 5,911,504 A to Schindlegger teaches a stirring device that mates with a container for mixing the contents of the container to a uniform consistency by stirring.

Claim 9, from which the other claims depend, claims a means for vibrating a fluid held in the interior of the claimed cup structure. This vibration causes the liquid held in the cup and nasal passages to oscillate back and forth across the cilia hairs found in the nasal passages, thereby loosening and pulling the virus infected mucous into the liquid for removal. Specification page 8, lines 21 et seq. Also in the Specification at page 9, lines 1 to 19, it is taught that the vibration washes the liquid abrasively back and forth across the nasal hairs that have trapped the virus or other undesirable particles in the

nasal passages.

Vibrating a liquid constitutes a fundamentally different action than stirring a liquid. Vibration of a liquid is used to move the liquid in a linear pattern back and forth, resulting in settling of particulate matter from a liquid, i.e., separation of a colloidal suspension into layered sediment due to vibratory motion coupled with the effect of gravity on the heavier particulate matter suspended in the liquid. Stirring of a liquid on the other hand is used to mix both particulate material and a liquid by causing a random motion of the particulates in the liquid medium until a generally uniform consistency (i.e., dispersion) is obtained. Hence, stirring a liquid containing particulates causes the opposite result of vibrating the same liquid with particulates. In the former, the liquid and particulates are mixed until a general uniform consistency is obtained, while in the latter, the back and forward motion of vibration causes a settling of the heavier particulates from the liquid. Therefore, since the mechanical motion resulting from stirring and vibrating differs, as well as the end result of each operation on the liquid also differs, they are non-equivalent operations and cannot be substituted one for the other. Applicant believes that Schindlegger does not teach or suggest the vibrating means claimed by Applicant in his claims.

Additionally, since Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant's claim 1, and claims 9-12 depend therefrom and further refine and add restrictive structure, Prince also fails to act as a valid basis for rejection of these claims.

Accordingly, since neither Prince nor Schindlegger, either singly nor in any reasonable combination provide the structure being claimed by Applicant in his claims,



Applicant respectfully requests that the rejection of these claims be withdrawn and these claims passed to allowance.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Prince reference discussed above in view of U.S. Patent No. 5,208,896 to Katayev (“Katayev”).

U.S. Patent No. 5,208,896 to Katayev teaches an electrically warmed baby bottle and recharging system.

Since Katayev must be combined with Prince to provide a missing element from claims 13-14 and Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant’s claim 1, and claims 13-14 depend therefrom and further refine and add restrictive structure, Prince also fails to act as a valid basis for rejection of these claims.

Accordingly, since neither Prince nor Katayev, either singly nor in any reasonable combination, provide the structure being claimed by Applicant in his claims, Applicant respectfully requests that the rejection of these claims be withdrawn and these claims passed to allowance.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Prince reference discussed above in view of U.S. Patent No. 3,483,569 to Armendariz (“Armendariz”).

U.S. Patent No. 3,483,569 to Armendariz teaches an underwater eye mask useful in scuba diving having protuberances on the interior of the mask to engage a user’s nostrils to prevent airflow through the nose.

Since Armendariz must be combined with Prince to provide a missing element

from claim 8 and Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant's claim 1, and claim 8 depends therefrom and further refine and add restrictive structure, Prince also fails to act as a valid basis for rejection of claim 8.

Accordingly, since neither Prince nor Armendariz, either singly nor in any reasonable combination provide the structure being claimed by Applicant in his claims, Applicant respectfully requests that the rejection of claim 8 be withdrawn and this claim passed to allowance.

Applicant's claim 16, currently amended, claims a cup having a sealing rim that is placed against the user's face while the user's head is held in a generally upright or even backward position while the cup is rotated from a generally vertical position to a generally horizontal position to allow the pouring of liquid contained in the cup into the user's nasal and sinus cavities.

Applicant's claimed positioning of the user's head directly contradicts the essential teaching of Prince requiring its user's head be held in a safe forward angle of tilt when liquid is inhaled to allow any seepage from the nasal cavities to exit the mouth instead of following the palate straight down the pharynx by force of gravity to enter the trachea, bronchia or the lungs. Prince states that "if the head is held upright while the container is at the acute angle allowing the cheek seals to contact the face and the nose to dip into the liquid, subsequently preventing the liquid from submerging the nostrils by allowing substantially all of liquid in the reservoir to spill out the opening above the pool over the rim and the cheek seals." Column 3, lines 50-56.

Likewise, Prince's cup is not capable of rotation against its user's face while

maintaining a seal against its user's face. In fact, this lack of sealing capability is highlighted by Prince as a safety feature. Specifically, at Column 3, lines 39 et seq., Prince states that when its cup is held at greater angles, such as perpendicular to the face, the liquid is prevented from flowing to the nasal cavities by the contact region failing to contact the face along the sides of the nose allowing the liquid to spill out the open regions of the contact region of the cup that would form the cheek seals.

Applicant's claim language, in direct contradiction, requires not only that the user's head be held generally upright or even rearward, but that the cup maintain a watertight seal between the cup's sealing rim and the user's face when the cup is rotated from a generally vertical to a generally horizontal position to allow liquid to be poured into the user's nasal cavities.

These claimed structural distinctions are due to a fundamental difference in operation of Applicant's claimed invention over that of Prince. Prince requires that its user hold his head tilted forward and inhale the cup's liquid. If the nasal passages or cavities are blocked with mucous then inhalation becomes difficult if not impossible. If Prince's user strongly inhales to overcome the blockage, once freed, the liquid, as well as the now loose mucous is capable of bypassing the palate to enter directly the trachea, bronchia or the lungs. Applicant overcomes this situation by having the user hold his head generally upright or even slightly rearward and rotating the cup to pour the liquid into the nasal cavities of the user. Thus, the user's inability to inhale if his nasal cavities are blocked, does not prevent the poured liquid solution from dissolving mucous blockage or seek its own path through the blockage using the force of gravity.

Additionally, Prince avoids having its liquid enter the user's throat area arguing

that it is unsafe. Applicant's device as claimed allows the user to have the cup's liquid enter into his throat area. By permitting coating of the throat area, Applicant's device allows placement of antibacterial and antiviral solutions where germs are likely to adhere to the throat lining thereby attacking the symptoms of a "sore throat."

Applicant's claim 16 is distinct over the Prince reference by requiring that the user's head position be generally upright or rearward and that the seal be maintained during rotation of the cup from a generally vertical to a generally horizontal position to allow contained liquid to pour by force of gravity into the user's nasal cavities. As such, applicant further believes that it is patentable over the Prince reference.

Since Armendariz must be combined with Prince to provide a missing element from claim 16 and Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant's claim 16, the combination of Prince and Armendariz also fails to act as a valid basis for rejection of claim 16.

Accordingly, since neither Prince nor Armendariz, either singly nor in any reasonable combination provide the structure being claimed by Applicant in his claims, Applicant respectfully requests that the rejection of claim 16 be withdrawn and this claim passed to allowance.

Claims 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Prince reference discussed above in view of Armendariz and further in view of Schindlegger.

Prince, Armendariz and Schindlegger have been analyzed above and those analyses are integrated into this analysis.

Since Armendariz and Schindlegger must be combined with Prince to provide a

missing element from claims 17-22 and Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant's claim 16, and claims 17-22 depend therefrom and further refine and add restrictive structure to that claimed in claim 16, Prince also fails to act as a valid basis for rejection of these claims.

Accordingly, since neither Armendariz nor Schindlegger, either singly nor in any reasonable combination provide the structure being claimed by Applicant in his claims, Applicant respectfully requests that the rejection of claims 17-22 be withdrawn and these claims passed to allowance.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Prince reference discussed above in view of Armendariz and further in view of Katayev.

Prince, Armendariz and Katayev have been analyzed above and those analyses are integrated into this analysis.

Since Armendariz and Katayev must be combined with Prince to provide a missing element from claims 23-25 and Prince, discussed and analyzed above, has been shown not to form a valid basis for rejection of Applicant's claim 16, and claims 23-25 depend therefrom and further refine and add restrictive structure to that claimed in claim 16, Prince also fails to act as a valid basis for rejection of these claims.

Accordingly, since neither Armendariz nor Katayev, either singly nor in any reasonable combination provide the structure being claimed by Applicant in his claims, Applicant respectfully requests that the rejection of claims 23-25 be withdrawn and these claims passed to allowance.

In conclusion, Applicant has responded to pending Office Action dated July 28, 2006 by adding additional drawings and amending the claims making them more definite

as to the subject matter being claimed to distinguish more easily the claimed invention as being patentable over the references cited by the Examiner in refusing allowance. With this response Applicant believes the application to now be in condition for allowance, and allowance of the application is respectfully requested. If the Examiner disagrees with Applicant, or feels that additional clarification is necessary, Applicant's attorney respectfully requests that the Examiner call Applicant's attorney to determine if the issue can be resolved prior to issuance of an additional office action in this matter.

Respectfully submitted,

Date:

*29 September 2006*

*Matthew F. Jodziewicz*  
Matthew F. Jodziewicz  
Reg. No. 30858  
Attorney for Applicant

**CERTIFICATE OF MAILING (37 C.F.R. 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being transmitted therewith) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

*29 September 2006*  
~~February 28, 2006~~  
*Matthew F. Jodziewicz*  
Matthew F. Jodziewicz